IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4464 OF 2005

Nagesh Laxman Shelar. ... Applicant.

Versus.

State of Maharashtra. ... Respondent.

ShriN.N.Gawankar with Shri Arfan A.H.E.A.Sait for the Applicant.

Shri K.V.Saste, A.P.P.for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 3rd August, 2005.

P.C.:

1. The offence alleged against the Applicant and the co-accused is under sections 394, 397 r/w. 34 of the Indian Penal Code. At the outset, the learned Advocate for the Applicant pointed out that the Accused No.2 has been enlarged on bail under the orders of the Sessions Court passed on 30th November 2004 and the Accused No.3 is also enlarged on bail under the orders of the Sessions Court dated 1st December 2004. He pointed out that the role played by the Applicant who is the Accused No.1 is no different from the role placed by the Applicant No.2 who is ordered to be enlarged on bail. He submitted that though the Applicant cannot claim parity on the basis of the order passed in favour of the 3rd Accused, he is entitled to claim parity on the basis

of the order passed in favour of the Accused No.2.

2. The learned A.P.P. pointed out that the Accused No.2 was enlarged on bail only because he could not be identified in the test identification parade. He submitted that the Applicant has been identified in the test identification parade and therefore, the Applicant cannot claim parity. He submitted that considering the material on record, the Applicant cannot be enlarged on bail.

3. It appears that there is hardly any material difference between the role played by the Applicant No.1 and the Applicant No.2. The case of the prosecution appears to be that the Accused No.2 took a sum of Rs.1,66,000/- out of the total amount of Rs.2,27,148/- which is the subject matter of the robbery and the Accused No.2 paid a sum of Rs.30,000/- each to the Applicant and the third Accused. The allegation made by the Complainant against the Accused No.2 appears to be that he gave a blow by a kick to the Complainant and he also assaulted colleague of the Complainant. The allegation against the Applicant No.2 is that he tried to snatch the bag containing currency notes from the Complainant and when the Complainant resisted, he assaulted the Complainant by a knife on both his hands and thereafter the accused persons ran away with the bag. The case of the Applicant is that he is identified

in test identification parade as when he was being produced before the learned Magistrate his face was not covered and was shown to the witnesses.

4. The investigation has been completed and charge-sheet has been filed. Considering what is stated above, the Applicant will have to be enlarged on bail.

5. Accordingly the following order is passed:

(i) The Applicant shall be enlarged on bail in connection with C.R.No.I-75 of 2003 registered with Mahatma Phule Police Station, subject to furnishing a personal bond of Rs.25,000/- with one or two local sureties in the like amount.

(ii) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

(iii) The Applicant shall cooperate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by

the Applicant to delay the trial may be a ground for cancellation of bail.

(iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

(v) Application is disposed of in above terms.

Judge.